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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1053, COA22-1054

Filed 5 December 2023

Wake County, No. 14 CVD 15242

MICHAEL SCOTT DAVIS, Plaintiff,

v.

PIA LAW, Defendant.

Appeal by Plaintiff from orders entered 5 April 2022 and 2 November 2022 by Judge J. Brian Ratledge in Wake County District Court. Heard in the Court of Appeals 9 May 2023.

Michael Davis, Pro Se.

No brief filed for the Defendant-Appellee.

WOOD, Judge.

Because the factual and procedural history is identical, we consolidate Plaintiff's appeals in COA22-1053 and COA22-1054 in this opinion. Michael Scott Davis ("Plaintiff") appeals from an order denying his motion for expedited relief from judgment pursuant to Rule 59(e) and an order denying his motion for modification of child support and denying his Rule 60(b) motion. After careful review of the record

and applicable law, we affirm both orders of the trial court.

I. Factual and Procedural Background

Plaintiff and Pia Law ("Defendant") were married on 29 January 2006, separated on 8 August 2014, and divorced on 13 November 2015. The parties have one daughter together, born in 2008. On 6 November 2015, the parties entered into a Consent Order and Memorandum of Judgment whereby they agreed the minor child would reside with Defendant and have daytime visits with Plaintiff every other weekend.

On 4 August 2017, the parties entered into a Consent Judgment and Order for Child Support ("Child Support Order") wherein Plaintiff agreed to pay child support in the amount of $500.00 per month to Defendant beginning on 1 June 2017. At the time the Child Support Order was entered, Defendant had primary custody of the child. The Child Support Order required the parties to "divide all in-network, unreimbursed medical, dental, orthodontic, optical, therapeutic, and prescription drug expenses for the minor child that are applied towards Defendant's insurance deductible," with Defendant paying 66% of the expense and Plaintiff paying 34% of the expense. Additionally, the parties agreed to divide equally all out-of-pocket expenses related to court-ordered therapy for their child, including reunification therapy. The Child Support Order resolved "the issues of permanent child support, both retroactive and prospective, attorney fees related to child support incurred by either party up to and including May 17, 2017, and Equitable Distribution."

On 14 November 2017, the court entered a temporary custody order placing the parties' daughter in the custody of the Wake County Department of Social Services ("DSS") after it determined that placing the minor child in the sole custodial care of either party was "not in the best interests of the minor child." The court ordered DSS to ensure the minor child attended reunification appointments with her therapist and the parties and granted visitations with the minor child to both parties.

Following the November 2017 temporary custody order, Defendant filed petitions for Writ of Certiorari and Supersedeas with this Court to stay the trial court's order and argued the trial court erred in granting DSS custody in the civil action as DSS was not made a party to the suit. On 5 December 2017, this Court entered a special order granting Defendant's petition for Writ of Supersedeas and returned the child to Defendant's custody.

On 20 August 2018, the trial court entered another temporary custody order which granted Plaintiff primary physical and sole legal custody of the minor child and granted Defendant visitation with the child every other weekend. The trial court found (1) Defendant's actions and her lack of support for Plaintiff's parental role "served to frustrate, erode, and harm Plaintiff's relationship with the minor child as well as his ability [to meaningfully] participate as a parent"; (2) despite the efforts of a psychologist, the child remains in an "untenable position in attempting to mend her relationship with Plaintiff as a direct result of Defendant's resistance and lack of support [for any] type of meaningful parental role for Plaintiff"; and (3) during the

period of the re-unification therapy Defendant "continued to express her belief that Plaintiff sexually abuses the minor child, despite no substantive evidence to support this belief."

On 23 April 2018, Plaintiff filed a motion for the modification of the Child Support Order based on a substantial change in circumstances: specifically, Plaintiff's declaring bankruptcy due to debt incurred by litigation; the costs of court ordered professional assessments, reunification therapy and additional therapeutic services for the minor child; and Plaintiff maintaining the "vast majority of custody of their child." Plaintiff requested his child support obligations to Defendant "be suspended or terminated."

The trial court conducted a permanent custody hearing from 24-26 April 2019. On 22 November 2019, the court entered an order ("Permanent Custody Order") granting joint legal and physical custody of the minor child to the parties. This 2019 Permanent Custody Order remains in effect today.

On 4 March 2020, Plaintiff filed a Rule 60(b) motion for relief from the November 2019 Permanent Custody Order. Plaintiff alleged the order contained "certain errors and unclear statements within the Findings of Fact portion." Plaintiff argued the trial court's findings were not supported by the evidence. Specifically, Plaintiff argued the trial court's findings that (1) Plaintiff returned their daughter to Defendant without disclosing to her the child had suffered a broken elbow; (2) Plaintiff took their daughter's clothes which she had worn during her visitation with

him; and (3) their daughter's advanced vocabulary "may have led to the belief that the Defendant coached [the minor child] to make allegations of inappropriate touching" were not supported by the evidence and needed to be corrected. Alternatively, Plaintiff requested a new trial date be set "to allow Plaintiff to [re-submit] appropriate evidence to the court where appropriate."

On 10 December 2021, Plaintiff filed a Rule 11(a) motion for sanctions against Defendant and her counsel alleging Defendant had: (1) engaged in consistent and unnecessary delays; (2) not notified Plaintiff of her emergency appeal to this Court in November 2017; (3) attempted to serve a deposition request to Plaintiff which was denied by a trial court; (4) made allegations "regarding this matter that [the trial court] has repeatedly uncovered"; (5) made a motion to recuse the presiding district court judge; and (6) testified sourcing "unsubstantiated allegations."

On 2 March 2022, the trial court heard Plaintiff's Rule 60(b) motion and motion to modify child support. At the hearing, the trial court first addressed Plaintiff's Rule 60(b) motion. When asked by the trial court the basis for his Rule 60(b) motion, Plaintiff responded his motion was based on mistake, inadvertence, surprise, or excusable neglect. Plaintiff alleged he was surprised and "taken off guard" by the actions taken in the order, but that the judge's actions were excusable because "he was very fastidious." Plaintiff also alleged there was insufficient evidence or, at times, contradictory evidence to support the trial court's findings in the contested 2019 Permanent Custody Order: "[T]he issue here, is what it was stated in that

Findings of Fact does not match what the [trial court] had said all through the very same Permanent Custody Order." However, Plaintiff acknowledged the trial court utilized findings of fact proposed by both parties in the order. The trial court denied Plaintiff's motion and found that Plaintiff "fails to allege with sufficiency the particulars which would necessitate granting relief under any of the options claimed under Rule 60(b)(1)."

Next, the trial court heard Plaintiff's motion to modify child support. At trial, Plaintiff argued that there is "disparity in income between [him] and the Defendant" and offered as evidence copies of the parties' 2020 tax returns and a proposed 2018 and 2019 worksheet prepared by Plaintiff. Plaintiff also offered as evidence a list delineating purported arrears owed by Defendant to Plaintiff after a change in custody occurred. On cross-examination, Plaintiff testified he serves as the executor of his brother's estate and receives payment for his services. Plaintiff further testified he owns a company for which an accountant prepares and audits the Profit and Loss Statements.

Defendant testified the parties had previously discussed their daughter attending private school and she has attended this private school for eight years. Defendant testified that when the parties separated in August 2014, she had primary custody of their daughter while Plaintiff had visitation alternating weekends; this arrangement lasted until September 2018. Thereafter, Plaintiff was granted primary custody from September 2018 until July 2019. Defendant testified she made child

support payments to Plaintiff while he had primary custody of their daughter. Defendant testified, according to her calculations, she had overpaid Plaintiff by $116.90 as of the end of 2022 and was owed child support arrearages in the amount of $14,746.00. Defendant testified she had determined the amount based upon the tax returns provided, Plaintiff's company's Profit and Loss Statements, paystubs, and the out-of-pocket medical, dental, and vision expenses for their daughter. Defendant's estimation of arrears was admitted without objection. Defendant's trial counsel offered calculated child support schedules for 2018 to 2022, which the trial court admitted into evidence without objection.

After considering the evidence presented and taking judicial notice of previous court orders, the trial court denied Plaintiff's motion to terminate child support but granted the motion to modify child support. On 5 April 2022, the trial court entered a written order modifying child support. In its order, the trial court ordered Plaintiff to pay monthly child support in the amount of $276.58 beginning on 1 April 2022. Under the terms of the 2017 Child Support Order, the trial court calculated Defendant owed Plaintiff $1,918.86. In determining this calculation, the trial court considered the modifications made in child custody throughout the life of the case, "the parties' incomes, health insurance paid [by] the Defendant, afterschool care paid by Defendant," and the school tuition paid by Defendant from October 2018 to March 2022. The trial court was "persuaded that the Parties agreed that the minor child would go to Thales [Academy] as long as they could afford it" and that the court had

not "heard anything saying that they couldn't afford it." In turn, the trial court found that Defendant provided $11,575.00 to Plaintiff in child support from February 2019 to February 2022, despite a lack of any court order on the matter. Additionally, the trial court found that Plaintiff owed Defendant $9,656.14 because Defendant had made overpayment to Plaintiff. Under the previous 2017 Child Support Order, the trial court concluded Plaintiff was required to pay $3,054.22 in arrearages. The trial court ordered Plaintiff to pay the arrears amount within forty-five days of the entry of the order.

On 1 April 2022, the trial court entered a written order denying Plaintiff's Rule 60(b) motion finding there was no "evidence of mistake, inadvertence, surprise, or excusable neglect within any Finding of Fact or Conclusion of Law of the Custody Order that would allow for the relief sought on behalf of Plaintiff" and concluded Plaintiff failed to allege any evidence of the same as required by Rule 60. The trial court determined the terms of the Permanent Custody Order entered on 22 November 2019 "shall remain in full force and effect."

In an order filed on 17 May 2022, the trial court denied Plaintiff's 10 December 2021 motion for sanctions under Rule 11(a). The court found there was no evidence of improper purpose, "such as intent to harass or to cause unnecessary delay or needless increase in the cost of litigation, which would allow for the sanctions sought on behalf of Plaintiff," and the "actions taken by Defendant's counsel on behalf of Defendant were warranted by existing law." The trial court further determined the

allegations in Plaintiff's motion were factually inaccurate when compared to the evidence presented at the hearing. The trial court determined Plaintiff's motion for sanctions served as another effort to re-litigate the April 2019 permanent custody hearing.

On 1 June 2022, Plaintiff filed a Rule 59(e) motion for reconsideration with the trial court and requested the trial court issue an expedited ruling from the 17 May 2022 order. Plaintiff alleged the order contained multiple errors of law. Plaintiff alleged that during the 2 March 2022 and 5 April 2022 hearings on his Rule 60(b) motion and motion to modify child support, the trial court deprived him of his Sixth and Fourteenth Amendment rights and violated judicial codes of conduct. Plaintiff contended the trial court also deprived him of his constitutional rights during the 26 April 2022 hearing when the trial court compressed the time allotted for arguments from three hours to one hour and denied his motion for continuance. Plaintiff also contended Defendant's counsel has engaged in sanctionable behaviors.

Meanwhile, the trial court entered an order on 29 August 2022 denying Plaintiff's motion for stay of execution of judgment of the 5 April 2022 order modifying child support pending appeal.

On 7 October 2022, the trial court heard Plaintiff's Rule 59(e) motion to reconsider the trial court's ruling on his Rule 11 motion for sanctions and entered an order on 2 November 2022 denying Plaintiff's motion. The trial court found, "[v]iewed in the light most favorable to Plaintiff, he has failed to meet his burden of proof

necessary to grant his motion. Furthermore, some of the arguments presented by Plaintiff at hearing are the same arguments previously heard by the [trial court] and disposed by the [c]ourt at prior court dates." Plaintiff appeals.

II. Analysis

Plaintiff brings several arguments on appeal. Each will be addressed in turn.

A. Rule 60(b) Motion.

Plaintiff contends "the trial court found, without any supporting evidence, that it did not make any mistake, inadvertence, surprise, or excusable neglect" despite Plaintiff's narration of the elements of Rule 60(b) "in detail on how certain findings of facts came to be recorded in the Permanent Custody Order." Plaintiff alleges he "did not seek to alter the order portion, [but was] only seeking to remove or clarify certain findings of facts which were not supported by evidence, and which could unfairly prejudice [him] in the future." According to Plaintiff, due "to the egregious errors and comments made by the trial court, [he] believes that the trial court may not have reviewed [his] motion." Plaintiff argues several of the trial court's findings of fact "lack supporting evidence" so that the trial court's order "ought to be reversed." We disagree.

Rule 60 of the North Carolina Rules of Civil Procedure governs motions for relief from a judgment or order. Specifically, Rule 60(b) provides, "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake,

inadvertence, surprise, or excusable neglect." N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 60(b) (2022). A party moving to set aside a judgment under Rule 60(b)(1) must show one of these grounds as well as the existence of a meritorious defense "because it would be a waste of judicial resources to vacate a judgment or order when the movant could not prevail on the merits of the civil action." *Baker v. Baker*, 115 N.C. App. 337, 340, 444 S.E.2d 478, 480 (1994) (citations omitted). "[A] trial judge's extensive power to afford relief [under Rule 60(b)] is accompanied by a corresponding discretion to deny it, and the only question for our determination . . . is whether the court abused its discretion in denying defendant's motion." *Sawyer v. Goodman*, 63 N.C. App. 191, 193, 303 S.E.2d 632, 633-34 (1983) (citation omitted). "A judge is subject to reversal for abuse of discretion only upon a showing by a litigant that the challenged actions are manifestly unsupported by reason." *Clark v. Clark*, 301 N.C. 123, 129, 271 S.E.2d 58, 63 (1980).

First, Plaintiff challenges finding of fact 13 which states: "[t]he court does not find any evidence of mistake, inadvertence, surprise, or excusable neglect within any Finding of Fact or Conclusion of Law of the Custody Order that would allow for the relief sought on behalf of Plaintiff." However, Plaintiff has failed to demonstrate any evidence of mistake, inadvertence, surprise, or excusable neglect as these terms are used in the context of Rule 60(b). Plaintiff's written Rule 60(b) motion and the arguments made during the hearing did not explicitly offer any evidence of mistake, inadvertence, surprise, or excusable neglect appearing in the 22 November 2019

Permanent Custody Order. Rather, Plaintiff made general arguments explaining why he disagreed with some of the findings in the Permanent Custody Order while also admitting that the order contained findings taken directly from both parties' proposed orders to the court. The record reflects that the trial court, in its discretion, evaluated and gave weight to the evidence presented in making its determination concerning the Permanent Custody order.

Plaintiff next contests finding of fact 14 which states: "The [c]ourt therefore finds that Plaintiff failed to allege any evidence under Rule 60(b) . . . that would require relief from the operation of the Custody order." The record evidence, however, tends to show Plaintiff's written motion and arguments at the hearing did not explicitly offer any evidence of mistake, inadvertence, surprise, or excusable neglect in the Permanent Custody Order. For example, in response to the trial court's inquiry, Plaintiff stated his Rule 60(b)(1) motion was based upon the trial court making an "inadvertent" mistake in the permanent order, which "surprised me, for sure, and it is excusable, because I believe that the -- I just believe that -- well, as I said in here a little more detail, he was very fastidious. So, this was surprising to me to see this." Plaintiff clearly disagreed with the court's findings but failed to put forth any evidence to support his contention that a mistake was made in the order. Thus, Plaintiff's argument is without merit.

Plaintiff next challenges finding of fact 15 which states: "[b]oth parties submitted competing Findings of Fact to be included in the Custody Order, and Judge

Denning was fair in his selection of those Findings of Fact." There is sufficient evidence to support this contested finding. Plaintiff conceded the Permanent Custody Order included findings of fact proposed by both parties. Furthermore, Plaintiff stated that although Judge Denning was tired after three days of hearing, he "was very, very fair." We conclude the trial court's fairness extended to its determination of the findings of fact in the Permanent Custody Order. Plaintiff's argument is overruled.

Plaintiff next challenges finding of fact 16 which states, "[t]he [c]ourt finds that Plaintiff essentially filed a Motion for Relief from a Judgment or Order with the intent to have a new order drafted, and without having a new trial." We agree with the trial court. The trial court found Plaintiff's Rule 60 motion is premised upon the following: "[c]ontained in the Permanent Custody [O]rder's Findings of Fact are certain unclear statements or statements not supported by the facts presented or fact pattern of this case." The record evidence tends to show Plaintiff, unsatisfied with some of the trial court's findings of fact, continued to offer testimony at the hearing seemingly to re-litigate the prior custody hearing and the prior custody schedule. The trial court did not abuse its discretion in denying Plaintiff's Rule 60(b)(1) motion. Plaintiff's argument is overruled.

B. Modification of Child Support Obligations.

Plaintiff contests several issues related to the trial court's order denying his motion to terminate child support and order modifying child support. Plaintiff argues

the court "has made clear errors in determining its findings of fact in [his] Application to Modify Child Support. Specifically, [F]indings of [F]act Nos. 8, 10, and 19-33 are not supported by the evidence." After careful review, we find no error and affirm the trial court's order.

"Child support orders entered by a trial court are accorded substantial deference by appellate courts[.]" *Ludlam v. Miller*, 225 N.C. App. 350, 356, 739 S.E.2d 555, 559 (2013) (citation omitted). In reviewing child support orders, this Court's review is limited to a determination whether the trial court abused its discretion. *Id.* at 355, 739 S.E.2d at 558. Under an abuse of discretion standard, the trial court's ruling will be overturned only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision. *Id.* The trial court is required to make "sufficient findings of fact and conclusions of law to allow the reviewing court to determine whether a judgment, and the legal conclusions that underlie it, represent a correct application of the law." *Id.* (citation omitted).

First, Plaintiff contests finding of fact 8 which states that he "earns an executor's fee each year from [his] brother's estate," arguing there is no evidence on record to support this finding. We disagree. The trial transcript reflects Plaintiff admitted he is paid a fee for serving as the executor of his brother's estate. Furthermore, Plaintiff's brief states he received the executor fee in installments over a period of more than three years, not as a lump sum. Based upon the record evidence, there is sufficient evidence to support the trial court's contested finding of

fact. Plaintiff's argument is without merit.

Plaintiff next challenges finding of fact 10 which states, "[t]he minor child currently attends Thales [A]cademy where she is excelling, and her tuition constitutes an extraordinary expense to Defendant." Plaintiff argues the trial court erroneously accepted that the parties' minor child attends Thales Academy and that the parties mutually agreed to enroll their child in the school. Plaintiff contends Defendant "never produced any evidence or testimony to contradict [his] position that he could never afford, never agreed to, and never once paid for [the school] expense." We note that at the time of the consent order and at the modification hearing, their daughter attended Thales Academy. Although the trial transcript indicates that Defendant stated on cross-examination Plaintiff has never provided tuition for Thales Academy, Defendant also testified Plaintiff communicated frequently with his daughter's teachers and school and had no objection to their daughter attending Thales Academy until recently. Therefore, Plaintiff's argument is overruled.

Plaintiff combines his argument regarding findings of fact 19 through 33 and argues the trial court made these findings "without supporting evidence, especially where the income of [Plaintiff] is recorded and used for calculation of the child support amounts." According to Plaintiff, the trial court erred in calculating his net income from his business by failing to deduct certain business expenses from his gross income. We disagree.

"Support for minor children is an obligation shared by both parents according

to their relative abilities to provide support and the reasonable needs and estate of the child." *Boyd v. Boyd*, 81 N.C. App. 71, 77, 343 S.E.2d 581, 585 (1986) (citations omitted).

N.C. Gen. Stat. § 50-13.4(c) provides, in pertinent part:

> (c) Payments ordered for the support of a minor child shall be in such amounts as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case.

N.C. Gen. Stat. § 50-13.4(c). The amount of a parent's child support obligation is determined by the application of the North Carolina Child Support Guidelines. *Id.* "Child support set consistent with the Guidelines is conclusively presumed to be in such amount as to meet the reasonable needs of the child and commensurate with the relative abilities of each parent to pay support." *Ferguson v. Ferguson*, 238 N.C. App. 257, 260, 768 S.E.2d 30, 34 (2014) (citation omitted). "If the trial court imposes the presumptive amount of child support under the Guidelines, it is not . . . required to take any evidence, make any findings of fact, or enter any conclusions of law relating to the reasonable needs of the child for support and the relative ability of each parent to [pay or] provide support." *Id.* at 260-61, 768 S.E.2d at 34 (quoting *Biggs v. Greer*, 136 N.C. App. 294, 297, 524 S.E.2d 577, 581 (2000)). Here, the trial court found the Guidelines apply, and Plaintiff does not challenge this finding.

The Schedule of Basic Child Support Obligations is based upon net income

converted to gross annual income by incorporating the federal tax rates, North Carolina tax rates and FICA. Gross income is income before deductions for federal or state income taxes, Social Security or Medicare taxes, health insurance premiums, retirement contributions, or other amounts withheld from income. N.C. Child Support Guidelines. The Guidelines define "income" as:

> a parent's actual gross income from any source, including but not limited to income from employment or self-employment (salaries, wages, commissions, bonuses, dividends, severance pay, etc.), ownership or operation of a business, partnership, or corporation, rental of property, retirement or pensions, interest, trusts, annuities, capital gains, social security benefits, workers compensation benefits, unemployment insurance benefits, disability pay and insurance benefits, gifts, prizes and alimony or maintenance received from persons other than the parties to the instant action. When income is received on an irregular, non-recurring, or one-time basis, the court may average or prorate the income over a specified period of time or require an obligor to pay as child support a percentage of his or her non-recurring income that is equivalent to the percentage of his or her recurring income paid for child support.

N.C. Child Support Guidelines.

In the present case, the trial transcript shows Defendant introduced into evidence proposed child support calculation schedules based on the Child Support Guidelines from October 2018 to February 2022, which were based upon tax returns provided, Plaintiff's Profit and Loss Statements from his business, paystubs, and the out of pocket medical, dental, and vision expenses for the child. These calculations were introduced into evidence without objection.

Furthermore, Plaintiff introduced his tax returns for 2020 into evidence and stated during the hearing that he had not brought his tax returns for 2018 and 2019. The findings of fact regarding Plaintiff's income for purposes of the child support calculation are supported by this evidence. Therefore, the order in the present case contains specific findings, supported by sufficient evidence, which supports the court's decision to modify Plaintiff's child support obligation. Despite Plaintiff asserting that at a later hearing he was found indigent by the trial court, "[t]he general rule is that the ability of a party to pay child support is determined by that person's income at the time the award is made." *Savani v. Savani*, 102 N.C. App. 496, 503, 403 S.E.2d 900, 904 (1991). Thus, the trial court did not err in concluding that Plaintiff had the ability to pay child support at the time the April 2022 order was entered.

Plaintiff next argues the court incorrectly concluded that he is able to pay child support to Defendant in the amount specified. He argues the court's conclusion of law "is based on the incorrect income calculation" and therefore not supported by sufficient evidence. However, the trial court's findings of fact regarding the parties' income, the custody arrangements of the child, and the out-of-pocket medical expenses and school expenses of the child were all based upon exhibits offered into evidence without objection by Plaintiff and served as sufficient basis for the trial court's conclusion Plaintiff had sufficient means to pay child support. Consequently, Plaintiff's argument is overruled.

Plaintiff next argues the trial court miscalculated the child support amounts and arrears. Plaintiff contends the trial court's order modifying child support is in direct conflict with N.C. Gen. Stat. § 50-13.10(d)(3) because he received primary custody of the child in August 2018.

N.C. Gen. Stat. § 50-13.10(d)(3) states:

> For purposes of this section, a child support payment or the relevant portion thereof, is not past due, and no arrearage accrues:
>
> . . .
>
> (3) During any period when the child is living with the supporting party pursuant to a valid court order or to an express or implied written or oral agreement transferring primary custody to the supporting party[.]

N.C. Gen. Stat. § 50-13.10(d)(3). However, child support payments may not be reduced retroactively so as to grant relief from arrearages, absent a compelling reason. *Van Nynatten v. Van Nynatten*, 113 N.C. App. 142, 144, 438 S.E.2d 417, 418 (1993). Although Plaintiff had primary custody of the child for a short time, the arrearages owed to Defendant while the minor child was in her primary custody or when the parties shared joint custody remained. In addition, the Child Support Order shows the trial court's determination of child support arrears reflected that primary custody of the child shifted between Plaintiff and Defendant. For example, in October 2018, Plaintiff was given primary custody and, from October 2018 to December 2018, Plaintiff had primary custody of the minor child. The trial court found the presumptive amount of child support Defendant owed to Plaintiff was

$882.24. Thus, the trial court's order relating to arrears owed by both parties reflects the changes in custody occurring throughout the life of this case. Plaintiff's argument is overruled.

Plaintiff next contends the order modifying child support is inconsistent with the provisions of N.C. Gen. Stat. § 50-13.4(c). Plaintiff argues the trial court's 4 April 2022 order "completely disregarded two of the most important factors: (1) that the custody schedule changed in 2018[,] and (2) it changed again in 2019." According to Plaintiff, "[t]he trial court also disregarded the Parties' incomes, ' . . . childcare and homemaker contributions' of each party and that [Defendant] unilaterally determined amounts sent . . . to [Plaintiff] several months after the custody schedule changed." We disagree.

Initially, as noted above, the trial court was under no obligation to render findings of fact because it did not deviate from the presumptive Guidelines. N.C. Gen. Stat. § 50-13.4. However, the trial court's findings of fact highlighted the custody arrangement that existed between the parties in both 2018 and 2019, as well as the changes to the parties' child support obligations occurring as a result. Although the trial court was not required to set forth explicit findings of fact "relating to the reasonable needs of the child for support and the relative ability of each parent to provide support," the trial court took due regard of the parties' incomes and the "childcare and homemaker contributions" of each party in its findings. *Browne v. Browne*, 101 N.C. App. 617, 624, 400 S.E.2d 736, 740 (1991). Finally, Plaintiff did

not present any evidence to support his assertion Defendant unilaterally determined amounts sent to Plaintiff after the custody schedule changed. Plaintiff's argument is without merit.

Plaintiff next argues the trial court has exhibited inappropriately long delays and a lack of case familiarity asserting that even "after the 3 March 2022 and 3 August 2022 hearings, the trial court has yet to familiarize itself with this case." Plaintiff contends none of the arguments or evidence proffered by him during the child support hearings were considered or referenced in the court's decisions. We disagree. The record evidence demonstrates the trial court heard testimony from Plaintiff of the changes in child support obligations throughout the life of the case and admitted as exhibits two of Plaintiff's tax returns. We also note that in exercising its judicial discretion, the trial court "is not required to make findings about the weight and credibility it assigns to the evidence before it." *Hartsell v. Hartsell*, 189 N.C. App. 65, 75, 657 S.E.2d 724, 730 (2008). Thus, Plaintiff's argument is overruled.

Plaintiff next asserts a violation of his Sixth and Fourteenth Amendment rights "by repeated delays of the trials for multiple years" and by the trial court allowing Defendant to inquire about "new information during trial with no prior notice." We presume by "new information" Plaintiff is referring to his online store expenses. Plaintiff's assertions are misplaced. It is well-settled that the Sixth Amendment does not apply to civil cases. "By its terms, the Sixth Amendment applies only to criminal cases." *State v. Adams*, 345 N.C. 745, 748, 483 S.E.2d 156, 157 (1997).

We also note Plaintiff failed to make any arguments pertaining to constitutional violations before the trial court and thus has waived his right to raise these arguments on appeal. Consequently, Plaintiff's argument is without merit. *See* N.C. R. App. P. 10.

C. Trial Court Finding Plaintiff in Civil Contempt.

Plaintiff argues the trial court erred in finding Plaintiff in willful contempt based upon an order for civil contempt entered on 7 October 2022. However, this order is not included in Plaintiff's 4 April 2022 notice of appeal and therefore, any arguments pertaining to it are not properly before us. Thus, this argument is dismissed. *See* N.C. R. App. P. 3(d).

D. Rule 59 Motion.

Plaintiff challenges the trial court's 2 November 2022 order denying his Rule 59(e) motion for expedited relief and affirming the denial of Plaintiff's motion requesting sanctions against Defendant and Defendant's counsel under Rule 11(a). On appeal, Plaintiff appears to contest the trial court's finding of fact number 8 which states:

> Viewed in the light most favorable to Plaintiff, he has failed to meet his burden of proof necessary to grant his motion. Furthermore, some of the arguments presented by Plaintiff at hearing are the same arguments previously heard by the [c]ourt and disposed [of] by the [c]ourt at prior court dates.

"Rule 59(e) governs motions to alter or amend a judgment, and such motions are limited to the grounds listed in Rule 59(a)." *N.C. All. for Transp. Reform, Inc. v.*

N.C. Dep't of Transp., 183 N.C. App. 466, 469, 645 S.E.2d 105, 108 (2007). Rule 59(a) lists nine grounds or causes upon which a new trial may be granted. N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 59(a). Although Plaintiff does not explicitly allege which Rule 59(a) ground he relies upon, we can infer that he brought his motion under Rule 59(a)(2): "misconduct of the prevailing party." § 1A-1, N.C. R. Civ. P. 59(a)(2). A motion under sections (a) and (e) of Rule 59 is "addressed to the sound discretion of the trial judge, whose ruling, in the absence of abuse of discretion, is not reviewable on appeal." *Glen Forest Corp. v. Bensch,* 9 N.C. App. 587, 589, 176 S.E.2d 851, 853 (1970) (citation omitted).

The trial court found that Plaintiff's motion served as another effort to re-litigate the April 2019 permanent custody hearing without having a new trial. Plaintiff alleges the trial court "brought up this theory of relitigating which again lacked a chain of reasoning." However, Plaintiff acknowledges he was admonished by the trial court that it was improper to relitigate issues already addressed by the trial court and which were not previously appealed. Plaintiff contends the purpose of a Rule 59 motion is to do just that. Consistent with our prior holding, a "request that the trial court reconsider its earlier decision granting the sanction may properly be treated as a Rule 59(e) motion," but a motion made pursuant to Rule 59, "cannot be used as a means to reargue matters already argued or to put forward arguments which were not made but could have been made." *Batlle v. Sabates*, 198 N.C. App. 407, 414, 681 S.E.2d 788, 794 (2009) (internal quotation marks omitted). Thus,

Plaintiff's amended motion did not provide a valid basis for granting a motion to alter or amend a judgment pursuant to Rule 59(e). *Id.* at 417-18, 681 S.E.2d at 796. Consequently, Plaintiff's argument is without merit.

Plaintiff further contends the trial court erred in denying Rule 11 sanctions against Defendant and her counsel. Plaintiff alleges Defendant and her counsel engaged in several "sanctionable behavior[s]." For example, Plaintiff argues that during the 26 April 2022 hearing, his testimony provided evidence Defendant requested thirteen continuances during this case. Accordingly, Plaintiff argues such an action shows Defendant and her counsel "engaged in ongoing dilation" of the parties' case. Although it is unclear why Plaintiff makes this argument, Plaintiff further contends that during the same hearing, Defendant's counsel "effectively implie[d], if not outright convey[ed], that Judge Denning had retaliated against [Defendant's counsel] when she moved for his recusal." According to Plaintiff, given Defendant's counsel " 'win at all costs' track record over the last eight plus years, ignoring these statements and inferences about the presiding judge's ethics and thus the possible validity of his rulings could reasonably ultimately be at the Parties' child's peril."

In reviewing an order imposing or denying sanctions pursuant to Rule 11:

> The appellate court will determine (1) whether the trial court's conclusions of law support its judgment or determination, (2) whether the trial court's conclusions of law are supported by its findings of fact, and (3) whether the findings of fact are supported by a sufficiency of the

> evidence. If the appellate court makes these three determinations in the affirmative, it must uphold the trial court's decision to impose or deny the imposition of mandatory sanctions under N.C.G.S. § 1A-1, Rule 11(a).

Id. at 425, 681 S.E.2d at 800 (citation omitted). According to Plaintiff, Defendant's continuance requests, recusal motion, and request for findings of fact and conclusions "regarding the [trial court's] sustaining of an objection by Plaintiff to sitting for deposition prior to the hearing of the parties['] permanent custody matter" were made with the intent to engage in sanctionable behavior. "Rule 11 sanctions are appropriate where the offending party either failed to conduct reasonable inquiry into the law or did not reasonably believe that the [pleading or motion] was warranted by existing law." *Ward v. Jett Props., LLC*, 191 N.C. App. 605, 608, 663 S.E.2d 862, 864 (2008) (citation omitted).

Here, the record evidence shows the trial court, weighing the evidence before it, determined the evidence presented at trial contradicted the allegations made in Plaintiff's motion for sanctions. For example, the trial court noted that contrary to Plaintiff's assertions, Defendant was never ordered by this Court "to pay attorney fees to Plaintiff" and "though [the trial court] declined Defendant's request for [r]ecusal and noted a general dislike at the timing of the request, he never found Defendant's request for [r]ecusal to actually be improper." There is sufficient evidence in the record to support the trial court's findings, and the trial court's finding that Plaintiff failed to meet the burden of proof necessary to grant his motion supports

its conclusion to deny Plaintiff's Rule 11 motion for sanctions. Because Plaintiff has not met his burden to show that Defendant's pleadings were filed for an improper purpose or that Defendant and Defendant's counsel otherwise engaged in sanctionable behavior, Plaintiff's argument is overruled.

III. Conclusion

Based upon careful review of the record evidence and applicable law, we affirm the trial court's orders denying Plaintiff's Rule 60(b) motion, denying Plaintiff's motion to terminate, yet still modifying, his child support obligations, denying Plaintiff's motion for expedited relief from judgment pursuant to Rule 59(e), and denying Plaintiff's request for Rule 11 sanctions.

AFFIRMED.

Chief Judge STROUD and Judge GRIFFIN concur.

Report per Rule 30(e).